

AMENDED IN SENATE JUNE 18, 2014

AMENDED IN ASSEMBLY MAY 7, 2014

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2632

Introduced by Assembly Member Maienschein

February 21, 2014

An act to amend Sections 1522, 1568.09, 1569.17, and 1596.871, of the Health and Safety Code, relating to care facilities.

LEGISLATIVE COUNSEL’S DIGEST

AB 2632, as amended, Maienschein. Care facilities.

Under existing law, the State Department of Social Services licenses and regulates, among other things, community care facilities, foster family home or certified family home, residential care facilities for persons with a chronic, life-threatening illness, residential care facilities for the elderly, and child day cares. Existing law requires the department, prior to issuing a license or special permit to operate any of those facilities, to secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person, as specified, has been convicted of a crime other than a minor traffic violation, or arrested for certain crimes, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated. Existing law requires an individual to obtain either a criminal record clearance or a criminal record exemption from the department prior to his or her employment, residence, or initial presence in those facilities listed above. Existing law prohibits the department from using a record of arrest to deny,

revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client.

This bill would prohibit the department, with regard to those facilities, from issuing a criminal record clearance to a person who has been ~~arrested, and that arrest is pending investigation or conviction, arrested~~ for specified crimes *or for any crime for which the department is prohibited from granting a criminal record exemption* prior to the department's completion of an investigation of the incident to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. *This bill would also require the department, subsequent to licensing but prior to a person's employment, residence, or initial presence in a specified facility, to secure from an appropriate law enforcement agency a criminal record to determine whether a person not exempt from fingerprinting or other person, as specified, has been convicted of a crime other than a minor traffic violation, arrested for certain crimes, or for any crime for which the department cannot grant an exemption.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1522 of the Health and Safety Code is
2 amended to read:
3 1522. The Legislature recognizes the need to generate timely
4 and accurate positive fingerprint identification of applicants as a
5 condition of issuing licenses, permits, or certificates of approval
6 for persons to operate or provide direct care services in a
7 community care facility, foster family home, or a certified family
8 home of a licensed foster family agency. Therefore, the Legislature
9 supports the use of the fingerprint live-scan technology, as
10 identified in the long-range plan of the Department of Justice for
11 fully automating the processing of fingerprints and other data by
12 the year 1999, otherwise known as the California Crime
13 Information Intelligence System (CAL-CII), to be used for
14 applicant fingerprints. It is the intent of the Legislature in enacting
15 this section to require the fingerprints of those individuals whose

1 contact with community care clients may pose a risk to the clients’
2 health and safety. An individual shall be required to obtain either
3 a criminal record clearance or a criminal record exemption from
4 the State Department of Social Services before his or her initial
5 presence in a community care facility.

6 (a) (1) Before *and, as applicable, subsequent to* issuing a license
7 or special permit to any person or persons to operate or manage a
8 community care facility, the State Department of Social Services
9 shall secure from an appropriate law enforcement agency a criminal
10 record to determine whether the applicant or any other person
11 specified in subdivision (b) has ever been convicted of a crime
12 other than a minor traffic violation or arrested for any crime
13 specified in Section 290 of the Penal Code, *or* for violating Section
14 245 or 273.5, of the Penal Code, subdivision (b) of Section 273a
15 of the Penal Code, or, prior to January 1, 1994, paragraph (2) of
16 Section 273a of the Penal Code, or for any crime for which the
17 department ~~cannot grant an exemption if the person was convicted~~
18 ~~and the person has not been exonerated.~~ *is prohibited from granting*
19 *a criminal record exemption pursuant to subdivision (g).*

20 (2) The criminal history information shall include the full
21 criminal record, if any, of those persons, and subsequent arrest
22 information pursuant to Section 11105.2 of the Penal Code.

23 (3) Except during the 2003–04 to the 2014–15 fiscal years,
24 inclusive, neither the Department of Justice nor the State
25 Department of Social Services may charge a fee for the
26 fingerprinting of an applicant for a license or special permit to
27 operate a facility providing nonmedical board, room, and care for
28 six or less children or for obtaining a criminal record of the
29 applicant pursuant to this section.

30 (4) The following shall apply to the criminal record information:

31 (A) If the State Department of Social Services finds that the
32 applicant, or any other person specified in subdivision (b), has
33 been convicted of a crime other than a minor traffic violation, the
34 application shall be denied, unless the director grants an exemption
35 pursuant to subdivision (g).

36 (B) If the State Department of Social Services finds that the
37 applicant, or any other person specified in subdivision (b), is
38 awaiting trial for a crime other than a minor traffic violation, the
39 State Department of Social Services may cease processing the

1 application criminal record information until the conclusion of
2 the trial.

3 (C) If no criminal record information has been recorded, the
4 Department of Justice shall provide the applicant and the State
5 Department of Social Services with a statement of that fact.

6 (D) If the State Department of Social Services finds after
7 licensure that the licensee, or any other person specified in
8 paragraph (1) of subdivision (b), has been convicted of a crime
9 other than a minor traffic violation, the license may be revoked,
10 unless the director grants an exemption pursuant to subdivision
11 (g).

12 (E) An applicant and any other person specified in subdivision
13 (b) shall submit fingerprint images and related information to the
14 Department of Justice for the purpose of searching the criminal
15 records of the Federal Bureau of Investigation, in addition to the
16 criminal records search required by this subdivision. If an applicant
17 and all other persons described in subdivision (b) meet all of the
18 conditions for licensure, except receipt of the Federal Bureau of
19 Investigation's criminal offender record information search
20 response for the applicant or any of the persons described in
21 subdivision (b), the department may issue a license if the applicant
22 and each person described in subdivision (b) has signed and
23 submitted a statement that he or she has never been convicted of
24 a crime in the United States, other than a traffic infraction, as
25 prescribed in paragraph (1) of subdivision (a) of Section 42001 of
26 the Vehicle Code. If, after licensure, the department determines
27 that the licensee or any other person specified in subdivision (b)
28 has a criminal record, the license may be revoked pursuant to
29 Section 1550. The department may also suspend the license
30 pending an administrative hearing pursuant to Section 1550.5.

31 (F) The State Department of Social Services shall develop
32 procedures to provide the individual's state and federal criminal
33 history information with the written notification of his or her
34 exemption denial or revocation based on the criminal record.
35 Receipt of the criminal history information shall be optional on
36 the part of the individual, as set forth in the agency's procedures.
37 The procedure shall protect the confidentiality and privacy of the
38 individual's record, and the criminal history information shall not
39 be made available to the employer.

1 (G) Notwithstanding any other law, the department is authorized
2 to provide an individual with a copy of his or her state or federal
3 level criminal offender record information search response as
4 provided to that department by the Department of Justice if the
5 department has denied a criminal background clearance based on
6 this information and the individual makes a written request to the
7 department for a copy specifying an address to which it is to be
8 sent. The state or federal level criminal offender record information
9 search response shall not be modified or altered from its form or
10 content as provided by the Department of Justice and shall be
11 provided to the address specified by the individual in his or her
12 written request. The department shall retain a copy of the
13 individual's written request and the response and date provided.

14 (b) (1) In addition to the applicant, this section shall be
15 applicable to criminal ~~convictions~~ of *record clearances and*
16 *exemptions* for the following persons:

17 (A) Adults responsible for administration or direct supervision
18 of staff.

19 (B) Any person, other than a client, residing in the facility.

20 (C) Any person who provides client assistance in dressing,
21 grooming, bathing, or personal hygiene. Any nurse assistant or
22 home health aide meeting the requirements of Section 1338.5 or
23 1736.6, respectively, who is not employed, retained, or contracted
24 by the licensee, and who has been certified or recertified on or
25 after July 1, 1998, shall be deemed to meet the criminal record
26 clearance requirements of this section. A certified nurse assistant
27 and certified home health aide who will be providing client
28 assistance and who falls under this exemption shall provide one
29 copy of his or her current certification, prior to providing care, to
30 the community care facility. The facility shall maintain the copy
31 of the certification on file as long as care is being provided by the
32 certified nurse assistant or certified home health aide at the facility.
33 Nothing in this paragraph restricts the right of the department to
34 exclude a certified nurse assistant or certified home health aide
35 from a licensed community care facility pursuant to Section 1558.

36 (D) Any staff person, volunteer, or employee who has contact
37 with the clients.

38 (E) If the applicant is a firm, partnership, association, or
39 corporation, the chief executive officer or other person serving in
40 like capacity.

1 (F) Additional officers of the governing body of the applicant,
2 or other persons with a financial interest in the applicant, as
3 determined necessary by the department by regulation. The criteria
4 used in the development of these regulations shall be based on the
5 person's capability to exercise substantial influence over the
6 operation of the facility.

7 (2) The following persons are exempt from the requirements
8 applicable under paragraph (1):

9 (A) A medical professional as defined in department regulations
10 who holds a valid license or certification from the person's
11 governing California medical care regulatory entity and who is
12 not employed, retained, or contracted by the licensee if all of the
13 following apply:

14 (i) The criminal record of the person has been cleared as a
15 condition of licensure or certification by the person's governing
16 California medical care regulatory entity.

17 (ii) The person is providing time-limited specialized clinical
18 care or services.

19 (iii) The person is providing care or services within the person's
20 scope of practice.

21 (iv) The person is not a community care facility licensee or an
22 employee of the facility.

23 (B) A third-party repair person or similar retained contractor if
24 all of the following apply:

25 (i) The person is hired for a defined, time-limited job.

26 (ii) The person is not left alone with clients.

27 (iii) When clients are present in the room in which the repair
28 person or contractor is working, a staff person who has a criminal
29 record clearance or exemption is also present.

30 (C) Employees of a licensed home health agency and other
31 members of licensed hospice interdisciplinary teams who have a
32 contract with a client or resident of the facility and are in the
33 facility at the request of that client or resident's legal
34 decisionmaker. The exemption does not apply to a person who is
35 a community care facility licensee or an employee of the facility.

36 (D) Clergy and other spiritual caregivers who are performing
37 services in common areas of the community care facility or who
38 are advising an individual client at the request of, or with the
39 permission of, the client or legal decisionmaker, are exempt from
40 fingerprint and criminal background check requirements imposed

1 by community care licensing. This exemption does not apply to a
2 person who is a community care licensee or employee of the
3 facility.

4 (E) Members of fraternal, service, or similar organizations who
5 conduct group activities for clients if all of the following apply:

- 6 (i) Members are not left alone with clients.
- 7 (ii) Members do not transport clients off the facility premises.
- 8 (iii) The same organization does not conduct group activities
9 for clients more often than defined by the department's regulations.

10 (3) In addition to the exemptions in paragraph (2), the following
11 persons in foster family homes, certified family homes, and small
12 family homes are exempt from the requirements applicable under
13 paragraph (1):

14 (A) Adult friends and family of the licensed or certified foster
15 parent, who come into the home to visit for a length of time no
16 longer than defined by the department in regulations, provided
17 that the adult friends and family of the licensee are not left alone
18 with the foster children. However, the licensee, acting as a
19 reasonable and prudent parent, as defined in paragraph (2) of
20 subdivision (a) of Section 362.04 of the Welfare and Institutions
21 Code, may allow his or her adult friends and family to provide
22 short-term care to the foster child and act as an appropriate
23 occasional short-term babysitter for the child.

24 (B) Parents of a foster child's friend when the foster child is
25 visiting the friend's home and the friend, licensed or certified foster
26 parent, or both are also present. However, the licensee, acting as
27 a reasonable and prudent parent, may allow the parent of the foster
28 child's friend to act as an appropriate short-term babysitter for the
29 child without the friend being present.

30 (C) Individuals who are engaged by any licensed or certified
31 foster parent to provide short-term care to the child for periods not
32 to exceed 24 hours. Caregivers shall use a reasonable and prudent
33 parent standard in selecting appropriate individuals to act as
34 appropriate occasional short-term babysitters.

35 (4) In addition to the exemptions specified in paragraph (2), the
36 following persons in adult day care and adult day support centers
37 are exempt from the requirements applicable under paragraph (1):

38 (A) Unless contraindicated by the client's individualized
39 program plan (IPP) or needs and service plan, a spouse, significant
40 other, relative, or close friend of a client, or an attendant or a

1 facilitator for a client with a developmental disability if the
2 attendant or facilitator is not employed, retained, or contracted by
3 the licensee. This exemption applies only if the person is visiting
4 the client or providing direct care and supervision to the client.

5 (B) A volunteer if all of the following applies:

6 (i) The volunteer is supervised by the licensee or a facility
7 employee with a criminal record clearance or exemption.

8 (ii) The volunteer is never left alone with clients.

9 (iii) The volunteer does not provide any client assistance with
10 dressing, grooming, bathing, or personal hygiene other than
11 washing of hands.

12 (5) (A) In addition to the exemptions specified in paragraph
13 (2), the following persons in adult residential and social
14 rehabilitation facilities, unless contraindicated by the client's
15 individualized program plan (IPP) or needs and services plan, are
16 exempt from the requirements applicable under paragraph (1): a
17 spouse, significant other, relative, or close friend of a client, or an
18 attendant or a facilitator for a client with a developmental disability
19 if the attendant or facilitator is not employed, retained, or
20 contracted by the licensee. This exemption applies only if the
21 person is visiting the client or providing direct care and supervision
22 to that client.

23 (B) Nothing in this subdivision shall prevent a licensee from
24 requiring a criminal record clearance of any individual exempt
25 from the requirements of this section, provided that the individual
26 has client contact.

27 (6) Any person similar to those described in this subdivision,
28 as defined by the department in regulations.

29 (c) (1) Subsequent to initial licensure, a person specified in
30 subdivision (b) who is not exempted from fingerprinting shall
31 obtain either a criminal record clearance or an exemption from
32 disqualification pursuant to subdivision (g) from the State
33 Department of Social Services prior to employment, residence, or
34 initial presence in the facility. A person specified in subdivision
35 (b) who is not exempt from fingerprinting shall be fingerprinted
36 and shall sign a declaration under penalty of perjury regarding any
37 prior criminal convictions. The licensee shall submit fingerprint
38 images and related information to the Department of Justice and
39 the Federal Bureau of Investigation, through the Department of
40 Justice, for a state and federal level criminal offender record

1 information search, or comply with paragraph (1) of subdivision
2 (h). These fingerprint images and related information shall be sent
3 by electronic transmission in a manner approved by the State
4 Department of Social Services and the Department of Justice for
5 the purpose of obtaining a permanent set of fingerprints, and shall
6 be submitted to the Department of Justice by the licensee. A
7 licensee's failure to prohibit the employment, residence, or initial
8 presence of a person specified in subdivision (b) who is not exempt
9 from fingerprinting and who has not received either a criminal
10 record clearance or an exemption from disqualification pursuant
11 to subdivision (g) or to comply with paragraph (1) of subdivision
12 (h), as required in this section, shall result in the citation of a
13 deficiency and the immediate assessment of civil penalties in the
14 amount of one hundred dollars (\$100) per violation per day for a
15 maximum of five days, unless the violation is a second or
16 subsequent violation within a 12-month period in which case the
17 civil penalties shall be in the amount of one hundred dollars (\$100)
18 per violation for a maximum of 30 days, and shall be grounds for
19 disciplining the licensee pursuant to Section 1550. The department
20 may assess civil penalties for continued violations as permitted by
21 Section 1548. The fingerprint images and related information shall
22 then be submitted to the Department of Justice for processing.
23 Upon request of the licensee, who shall enclose a self-addressed
24 stamped postcard for this purpose, the Department of Justice shall
25 verify receipt of the fingerprints.

26 (2) Within 14 calendar days of the receipt of the fingerprint
27 images, the Department of Justice shall notify the State Department
28 of Social Services of the criminal record information, as provided
29 for in subdivision (a). If no criminal record information has been
30 recorded, the Department of Justice shall provide the licensee and
31 the State Department of Social Services with a statement of that
32 fact within 14 calendar days of receipt of the fingerprint images.
33 Documentation of the individual's clearance or exemption from
34 disqualification shall be maintained by the licensee and be available
35 for inspection. If new fingerprint images are required for
36 processing, the Department of Justice shall, within 14 calendar
37 days from the date of receipt of the fingerprints, notify the licensee
38 that the fingerprints were illegible, the Department of Justice shall
39 notify the State Department of Social Services, as required by
40 Section 1522.04, and shall also notify the licensee by mail, within

1 14 days of electronic transmission of the fingerprints to the
2 Department of Justice, if the person has no criminal history
3 recorded. A violation of the regulations adopted pursuant to Section
4 1522.04 shall result in the citation of a deficiency and an immediate
5 assessment of civil penalties in the amount of one hundred dollars
6 (\$100) per violation per day for a maximum of five days, unless
7 the violation is a second or subsequent violation within a 12-month
8 period in which case the civil penalties shall be in the amount of
9 one hundred dollars (\$100) per violation for a maximum of 30
10 days, and shall be grounds for disciplining the licensee pursuant
11 to Section 1550. The department may assess civil penalties for
12 continued violations as permitted by Section 1548.

13 (3) Except for persons specified in subdivision (b) who are
14 exempt from fingerprinting, the licensee shall endeavor to ascertain
15 the previous employment history of persons required to be
16 fingerprinted. If it is determined by the State Department of Social
17 Services, on the basis of the fingerprint images and related
18 information submitted to the Department of Justice, that subsequent
19 to obtaining a criminal record clearance or exemption from
20 disqualification pursuant to subdivision (g), the person has been
21 convicted of, or is awaiting trial for, a sex offense against a minor,
22 or has been convicted for an offense specified in Section 243.4,
23 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the State
24 Department of Social Services shall notify the licensee to act
25 immediately to terminate the person's employment, remove the
26 person from the community care facility, or bar the person from
27 entering the community care facility. The State Department of
28 Social Services may subsequently grant an exemption from
29 disqualification pursuant to subdivision (g). If the conviction or
30 arrest was for another crime, except a minor traffic violation, the
31 licensee shall, upon notification by the State Department of Social
32 Services, act immediately to either (A) terminate the person's
33 employment, remove the person from the community care facility,
34 or bar the person from entering the community care facility; or
35 (B) seek an exemption from disqualification pursuant to subdivision
36 (g). The State Department of Social Services shall determine if
37 the person shall be allowed to remain in the facility until a decision
38 on the exemption from disqualification is rendered. A licensee's
39 failure to comply with the department's prohibition of employment,
40 contact with clients, or presence in the facility as required by this

1 paragraph shall result in a citation of deficiency and an immediate
2 assessment of civil penalties in the amount of one hundred dollars
3 (\$100) per violation per day and shall be grounds for disciplining
4 the licensee pursuant to Section 1550.

5 (4) The department may issue an exemption from
6 disqualification on its own motion pursuant to subdivision (g) if
7 the person's criminal history indicates that the person is of good
8 character based on the age, seriousness, and frequency of the
9 conviction or convictions. The department, in consultation with
10 interested parties, shall develop regulations to establish the criteria
11 to grant an exemption from disqualification pursuant to this
12 paragraph.

13 (5) Concurrently with notifying the licensee pursuant to
14 paragraph (3), the department shall notify the affected individual
15 of his or her right to seek an exemption from disqualification
16 pursuant to subdivision (g). The individual may seek an exemption
17 from disqualification only if the licensee terminates the person's
18 employment or removes the person from the facility after receiving
19 notice from the department pursuant to paragraph (3).

20 (d) (1) Before *and, as applicable, subsequent to* issuing a
21 license or certificate of approval to any person or persons to operate
22 a foster family home or certified family home as described in
23 Section 1506, the State Department of Social Services or other
24 approving authority shall secure California and Federal Bureau of
25 Investigation criminal history information to determine whether
26 the applicant or any person specified in subdivision (b) who is not
27 exempt from fingerprinting has ever been convicted of a crime
28 other than a minor traffic violation or arrested for any crime
29 specified in subdivision (c) of Section 290 of the Penal Code, for
30 violating Section 245 or 273.5, subdivision (b) of Section 273a,
31 or, prior to January 1, 1994, paragraph (2) of Section 273a, of the
32 Penal Code, or for any crime for which the department ~~cannot~~
33 ~~grant an exemption if the person was convicted and the person has~~
34 ~~not been exonerated.~~ *is prohibited from granting a criminal record*
35 *exemption pursuant to subdivision (g).* The State Department of
36 Social Services or other approving authority shall not issue a
37 license or certificate of approval to any foster family home or
38 certified family home applicant who has not obtained both a
39 California and Federal Bureau of Investigation criminal record

1 clearance or exemption from disqualification pursuant to
2 subdivision (g).

3 (2) The criminal history information shall include the full
4 criminal record, if any, of those persons.

5 (3) Neither the Department of Justice nor the State Department
6 of Social Services may charge a fee for the fingerprinting of an
7 applicant for a license, special permit, or certificate of approval
8 described in this subdivision. The record, if any, shall be taken
9 into consideration when evaluating a prospective applicant.

10 (4) The following shall apply to the criminal record information:

11 (A) If the applicant or other persons specified in subdivision
12 (b) who are not exempt from fingerprinting have convictions that
13 would make the applicant's home unfit as a foster family home or
14 a certified family home, the license, special permit, ~~or~~ certificate
15 of approval, *or presence* shall be denied.

16 (B) If the State Department of Social Services finds that the
17 applicant, or any person specified in subdivision (b) who is not
18 exempt from fingerprinting is awaiting trial for a crime other than
19 a minor traffic violation, the State Department of Social Services
20 or other approving authority may cease processing the ~~application~~
21 *criminal record information* until the conclusion of the trial.

22 (C) For purposes of this subdivision, a criminal record clearance
23 provided under Section 8712 of the Family Code may be used by
24 the department or other approving agency.

25 (D) To the same extent required for federal funding, an applicant
26 for a foster family home license or for certification as a family
27 home, and any other person specified in subdivision (b) who is
28 not exempt from fingerprinting, shall submit a set of fingerprint
29 images and related information to the Department of Justice and
30 the Federal Bureau of Investigation, through the Department of
31 Justice, for a state and federal level criminal offender record
32 information search, in addition to the criminal records search
33 required by subdivision (a).

34 (5) Any person specified in this subdivision shall, as a part of
35 the application, be fingerprinted and sign a declaration under
36 penalty of perjury regarding any prior criminal convictions or
37 arrests for any crime against a child, spousal or cohabitant abuse,
38 or any crime for which the department cannot grant an exemption
39 if the person was convicted and shall submit these fingerprints to
40 the licensing agency or other approving authority.

(6) (A) Subsequent to initial licensure or certification, a person specified in subdivision (b) who is not exempt from fingerprinting shall obtain both a California and Federal Bureau of Investigation criminal record clearance, or an exemption from disqualification pursuant to subdivision (g), prior to employment, residence, or initial presence in the foster family or certified family home. A foster family home licensee or foster family agency shall submit fingerprint images and related information of persons specified in subdivision (b) who are not exempt from fingerprinting to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, or to comply with paragraph (1) of subdivision (h). A foster family home licensee's or a foster family agency's failure to either prohibit the employment, residence, or initial presence of a person specified in subdivision (b) who is not exempt from fingerprinting and who has not received either a criminal record clearance or an exemption from disqualification pursuant to subdivision (g), or comply with paragraph (1) of subdivision (h), as required in this section, shall result in a citation of a deficiency, and the immediate civil penalties of one hundred dollars (\$100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars (\$100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550. A violation of the regulation adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars (\$100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars (\$100) per violation for a maximum of 30 days, and shall be grounds for disciplining the foster family home licensee or the foster family agency pursuant to Section 1550. The State Department of Social Services may assess penalties for continued violations, as permitted by Section 1548. The fingerprint images shall then be submitted to the Department of Justice for processing.

(B) Upon request of the licensee, who shall enclose a self-addressed envelope for this purpose, the Department of Justice

1 shall verify receipt of the fingerprints. Within five working days
2 of the receipt of the criminal record or information regarding
3 criminal convictions from the Department of Justice, the
4 department shall notify the applicant of any criminal arrests or
5 convictions. If no arrests or convictions are recorded, the
6 Department of Justice shall provide the foster family home licensee
7 or the foster family agency with a statement of that fact concurrent
8 with providing the information to the State Department of Social
9 Services.

10 (7) If the State Department of Social Services finds that the
11 applicant, or any other person specified in subdivision (b) who is
12 not exempt from fingerprinting, has been convicted of a crime
13 other than a minor traffic violation, the application *or presence*
14 shall be denied, unless the director grants an exemption from
15 disqualification pursuant to subdivision (g).

16 (8) If the State Department of Social Services finds after
17 licensure or the granting of the certificate of approval that the
18 licensee, certified foster parent, or any other person specified in
19 subdivision (b) who is not exempt from fingerprinting, has been
20 convicted of a crime other than a minor traffic violation, the license
21 or certificate of approval may be revoked by the department or the
22 foster family agency, whichever is applicable, unless the director
23 grants an exemption from disqualification pursuant to subdivision
24 (g). A licensee's failure to comply with the department's
25 prohibition of employment, contact with clients, or presence in
26 the facility as required by paragraph (3) of subdivision (c) shall
27 be grounds for disciplining the licensee pursuant to Section 1550.

28 (e) (1) The State Department of Social Services shall not use
29 a record of arrest to deny, revoke, or terminate any application,
30 license, employment, or residence unless the department
31 investigates the incident and secures evidence, whether or not
32 related to the incident of arrest, that is admissible in an
33 administrative hearing to establish conduct by the person that may
34 pose a risk to the health and safety of any person who is or may
35 become a client.

36 (2) The department shall not issue a criminal record clearance
37 to a person who has been ~~arrested, and that arrest is pending~~
38 ~~investigation or conviction~~, *arrested* for any crime specified in
39 Section 290 of the Penal Code, *or* for violating Section 245 or
40 273.5, subdivision (b) of Section 273a, of the Penal Code, or, prior

1 to January 1, 1994, paragraph (2) of Section 273a of the Penal
2 Code, *or for any crime for which the department is prohibited from*
3 *granting a criminal record exemption pursuant to subdivision (g),*
4 prior to the department's completion of an investigation pursuant
5 to paragraph (1).

6 (3) The State Department of Social Services is authorized to
7 obtain any arrest or conviction records or reports from any law
8 enforcement agency as necessary to the performance of its duties
9 to inspect, license, and investigate community care facilities and
10 individuals associated with a community care facility.

11 (f) (1) For purposes of this section or any other provision of
12 this chapter, a conviction means a plea or verdict of guilty or a
13 conviction following a plea of nolo contendere. Any action that
14 the State Department of Social Services is permitted to take
15 following the establishment of a conviction may be taken when
16 the time for appeal has elapsed, when the judgment of conviction
17 has been affirmed on appeal, or when an order granting probation
18 is made suspending the imposition of sentence, notwithstanding
19 a subsequent order pursuant to Sections 1203.4 and 1203.4a of the
20 Penal Code permitting the person to withdraw his or her plea of
21 guilty and to enter a plea of not guilty, or setting aside the verdict
22 of guilty, or dismissing the accusation, information, or indictment.
23 For purposes of this section or any other provision of this chapter,
24 the record of a conviction, or a copy thereof certified by the clerk
25 of the court or by a judge of the court in which the conviction
26 occurred, shall be conclusive evidence of the conviction. For
27 purposes of this section or any other provision of this chapter, the
28 arrest disposition report certified by the Department of Justice, or
29 documents admissible in a criminal action pursuant to Section
30 969b of the Penal Code, shall be prima facie evidence of the
31 conviction, notwithstanding any other law prohibiting the
32 admission of these documents in a civil or administrative action.

33 (2) For purposes of this section or any other provision of this
34 chapter, the department shall consider criminal convictions from
35 another state or federal court as if the criminal offense was
36 committed in this state.

37 (g) (1) After review of the record, the director may grant an
38 exemption from disqualification for a license or special permit as
39 specified in paragraph (4) of subdivision (a), or for a license,
40 special permit, or certificate of approval as specified in paragraphs

(4), (7), and (8) of subdivision (d), or for employment, residence, or presence in a community care facility as specified in paragraphs (3), (4), and (5) of subdivision (c), if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). Except as otherwise provided in this subdivision, an exemption shall not be granted pursuant to this subdivision if the conviction was for any of the following offenses:

(A) (i) An offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a, or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (c) of Section 290, or Section 368, of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(ii) Notwithstanding clause (i), the director may grant an exemption regarding the conviction for an offense described in paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5 of the Penal Code, if the employee or prospective employee has been rehabilitated as provided in Section 4852.03 of the Penal Code, has maintained the conduct required in Section 4852.05 of the Penal Code for at least 10 years, and has the recommendation of the district attorney representing the employee's county of residence, or if the employee or prospective employee has received a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code. This clause shall not apply to foster care providers, including relative caregivers, nonrelated extended family members, or any other person specified in subdivision (b), in those homes where the individual has been convicted of an offense described in paragraph (1) of subdivision (c) of Section 667.5 of the Penal Code.

(B) A felony offense specified in Section 729 of the Business and Professions Code or Section 206 or 215, subdivision (a) of Section 347, subdivision (b) of Section 417, or subdivision (a) of Section 451 of the Penal Code.

(C) Under no circumstances shall an exemption be granted pursuant to this subdivision to any foster care provider applicant if that applicant, or any other person specified in subdivision (b)

1 in those homes, has a felony conviction for either of the following
2 offenses:

3 (i) A felony conviction for child abuse or neglect, spousal abuse,
4 crimes against a child, including child pornography, or for a crime
5 involving violence, including rape, sexual assault, or homicide,
6 but not including other physical assault and battery. For purposes
7 of this subparagraph, a crime involving violence means a violent
8 crime specified in clause (i) of subparagraph (A), or subparagraph
9 (B).

10 (ii) A felony conviction, within the last five years, for physical
11 assault, battery, or a drug- or alcohol-related offense.

12 (iii) This subparagraph shall not apply to licenses or approvals
13 wherein a caregiver was granted an exemption to a criminal
14 conviction described in clause (i) or (ii) prior to the enactment of
15 this subparagraph.

16 (iv) This subparagraph shall remain operative only to the extent
17 that compliance with its provisions is required by federal law as
18 a condition for receiving funding under Title IV-E of the federal
19 Social Security Act (42 U.S.C. Sec. 670 et seq.).

20 (2) The department shall not prohibit a person from being
21 employed or having contact with clients in a facility on the basis
22 of a denied criminal record exemption request or arrest information
23 unless the department complies with the requirements of Section
24 1558.

25 (h) (1) For purposes of compliance with this section, the
26 department may permit an individual to transfer a current criminal
27 record clearance, as defined in subdivision (a), from one facility
28 to another, as long as the criminal record clearance has been
29 processed through a state licensing district office, and is being
30 transferred to another facility licensed by a state licensing district
31 office. The request shall be in writing to the State Department of
32 Social Services, and shall include a copy of the person's driver's
33 license or valid identification card issued by the Department of
34 Motor Vehicles, or a valid photo identification issued by another
35 state or the United States government if the person is not a
36 California resident. Upon request of the licensee, who shall enclose
37 a self-addressed envelope for this purpose, the State Department
38 of Social Services shall verify whether the individual has a
39 clearance that can be transferred.

1 (2) The State Department of Social Services shall hold criminal
2 record clearances in its active files for a minimum of three years
3 after an employee is no longer employed at a licensed facility in
4 order for the criminal record clearance to be transferred.

5 (3) The following shall apply to a criminal record clearance or
6 exemption from the department or a county office with
7 department-delegated licensing authority:

8 (A) A county office with department-delegated licensing
9 authority may accept a clearance or exemption from the
10 department.

11 (B) The department may accept a clearance or exemption from
12 any county office with department-delegated licensing authority.

13 (C) A county office with department-delegated licensing
14 authority may accept a clearance or exemption from any other
15 county office with department-delegated licensing authority.

16 (4) With respect to notifications issued by the Department of
17 Justice pursuant to Section 11105.2 of the Penal Code concerning
18 an individual whose criminal record clearance was originally
19 processed by the department or a county office with
20 department-delegated licensing authority, all of the following shall
21 apply:

22 (A) The Department of Justice shall process a request from the
23 department or a county office with department-delegated licensing
24 authority to receive the notice only if all of the following conditions
25 are met:

26 (i) The request shall be submitted to the Department of Justice
27 by the agency to be substituted to receive the notification.

28 (ii) The request shall be for the same applicant type as the type
29 for which the original clearance was obtained.

30 (iii) The request shall contain all prescribed data elements and
31 format protocols pursuant to a written agreement between the
32 department and the Department of Justice.

33 (B) (i) On or before January 7, 2005, the department shall notify
34 the Department of Justice of all county offices that have
35 department-delegated licensing authority.

36 (ii) The department shall notify the Department of Justice within
37 15 calendar days of the date on which a new county office receives
38 department-delegated licensing authority or a county's delegated
39 licensing authority is rescinded.

1 (C) The Department of Justice shall charge the department, a
2 county office with department-delegated licensing authority, or a
3 county child welfare agency with criminal record clearance and
4 exemption authority, a fee for each time a request to substitute the
5 recipient agency is received for purposes of this paragraph. This
6 fee shall not exceed the cost of providing the service.

7 (5) (A) A county child welfare agency with authority to secure
8 clearances pursuant to Section 16504.5 of the Welfare and
9 Institutions Code and to grant exemptions pursuant to Section
10 361.4 of the Welfare and Institutions Code may accept a clearance
11 or exemption from another county with criminal record and
12 exemption authority pursuant to these sections.

13 (B) With respect to notifications issued by the Department of
14 Justice pursuant to Section 11105.2 of the Penal Code concerning
15 an individual whose criminal record clearance was originally
16 processed by a county child welfare agency with criminal record
17 clearance and exemption authority, the Department of Justice shall
18 process a request from a county child welfare agency with criminal
19 record and exemption authority to receive the notice only if all of
20 the following conditions are met:

21 (i) The request shall be submitted to the Department of Justice
22 by the agency to be substituted to receive the notification.

23 (ii) The request shall be for the same applicant type as the type
24 for which the original clearance was obtained.

25 (iii) The request shall contain all prescribed data elements and
26 format protocols pursuant to a written agreement between the State
27 Department of Social Services and the Department of Justice.

28 (i) The full criminal record obtained for purposes of this section
29 may be used by the department or by a licensed adoption agency
30 as a clearance required for adoption purposes.

31 (j) If a licensee or facility is required by law to deny employment
32 or to terminate employment of any employee based on written
33 notification from the state department that the employee has a prior
34 criminal conviction or is determined unsuitable for employment
35 under Section 1558, the licensee or facility shall not incur civil
36 liability or unemployment insurance liability as a result of that
37 denial or termination.

38 (k) The State Department of Social Services may charge a fee
39 for the costs of processing electronic fingerprint images and related
40 information.

(l) Amendments to this section made in the 1999 portion of the 1999–2000 Regular Session shall be implemented commencing 60 days after the effective date of the act amending this section in the 1999 portion of the 1999–2000 Regular Session, except that those provisions for the submission of fingerprints for searching the records of the Federal Bureau of Investigation shall be implemented 90 days after the effective date of that act.

SEC. 2. Section 1568.09 of the Health and Safety Code is amended to read:

1568.09. It is the intent of the Legislature in enacting this section to require the electronic fingerprint images of those individuals whose contact with residents of residential care facilities for persons with a chronic, life-threatening illness may pose a risk to the residents' health and safety.

It is the intent of the Legislature, in enacting this section, to require the electronic fingerprint images of those individuals whose contact with community care clients may pose a risk to the clients' health and safety. An individual shall be required to obtain either a criminal record clearance or a criminal record exemption from the State Department of Social Services before his or her initial presence in a residential care facility for persons with a chronic, life-threatening illness.

(a) (1) Before *and, as applicable, subsequent to* issuing a license to a person or persons to operate or manage a residential care facility, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in subdivision (c) of Section 290 of the Penal Code, *or* for violating Section 245 or 273.5, subdivision (b) of Section 273a, or, prior to January 1, 1994, paragraph (2) of Section 273a, of the Penal Code, or for any crime for which the department ~~cannot grant an exemption if the person was convicted and the person has not been exonerated~~. *is prohibited from granting a criminal record exemption pursuant to subdivision (f).*

(2) The criminal history information shall include the full criminal record, if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code.

(3) The following shall apply to the criminal record information:

1 (A) If the State Department of Social Services finds that the
2 applicant or another person specified in subdivision (b), has been
3 convicted of a crime, other than a minor traffic violation, the
4 application shall be denied, unless the director grants an exemption
5 pursuant to subdivision (f).

6 (B) If the State Department of Social Services finds that the
7 applicant, or another person specified in subdivision ~~(b)~~ (b), is
8 awaiting trial for a crime other than a minor traffic violation, the
9 State Department of Social Services may cease processing the
10 application *criminal record information* until the conclusion of
11 the trial.

12 (C) If no criminal record information has been recorded, the
13 Department of Justice shall provide the applicant and the State
14 Department of Social Services with a statement of that fact.

15 (D) If the State Department of Social Services finds after
16 licensure that the licensee, or any other person specified in
17 paragraph (2) of subdivision (b), has been convicted of a crime
18 other than a minor traffic violation, the license may be revoked,
19 unless the director grants an exemption pursuant to subdivision
20 (f).

21 (E) An applicant and any other person specified in subdivision
22 (b) shall submit fingerprint images and related information to the
23 Department of Justice and the Federal Bureau of Investigation,
24 through the Department of Justice, for a state and federal level
25 criminal offender record information search, in addition to the
26 search required by this subdivision. If an applicant meets all other
27 conditions for licensure, except receipt of the Federal Bureau of
28 Investigation's criminal history information for the applicant and
29 persons listed in subdivision (b), the department may issue a license
30 if the applicant and each person described by subdivision (b) has
31 signed and submitted a statement that he or she has never been
32 convicted of a crime in the United States, other than a traffic
33 infraction as defined in paragraph (1) of subdivision (a) of Section
34 42001 of the Vehicle Code. If, after licensure, the department
35 determines that the licensee or person specified in subdivision (b)
36 has a criminal record, the license may be revoked pursuant to
37 subdivision (a) of Section 1568.082. The department may also
38 suspend the license pending an administrative hearing pursuant to
39 subdivision (b) of Section 1568.082.

(b) In addition to the applicant, this section shall be applicable to criminal ~~convictions~~ of *record clearances and exemptions* for the following persons:

(1) Adults responsible for administration or direct supervision of staff of the facility.

(2) A person, other than a resident, residing in the facility.

(3) A person who provides resident assistance in dressing, grooming, bathing, or personal hygiene. A nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who falls under this exemption shall provide one copy of his or her current certification, prior to providing care, to the residential care facility for persons with a chronic, life-threatening illness. The facility shall maintain the copy of the certification on file as long as care is being provided by the certified nurse assistant or certified home health aide at the facility. This paragraph does not restrict the right of the department to exclude a certified nurse assistant or certified home health aide from a licensed residential care facility for persons with a chronic, life-threatening illness pursuant to Section 1568.092.

(4) (A) A staff person, volunteer, or employee who has contact with the residents.

(B) A volunteer shall be exempt from the requirements of this subdivision if he or she is a relative, significant other, or close friend of a client receiving care in the facility and the volunteer does not provide direct care and supervision of residents. A volunteer who provides direct care and supervision shall be exempt if the volunteer is a resident's spouse, significant other, close friend, or family member and provides direct care and supervision to that resident only at the request of the resident. The department may define in regulations persons similar to those described in this subparagraph who may be exempt from the requirements of this subdivision.

(5) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in that capacity.

1 (6) Additional officers of the governing body of the applicant,
2 or other persons with a financial interest in the applicant, as
3 determined necessary by the department by regulation. The criteria
4 used in the development of these regulations shall be based on the
5 person's capability to exercise substantial influence over the
6 operation of the facility.

7 (c) (1) (A) Subsequent to initial licensure, a person specified
8 in subdivision (b) and not exempted from fingerprinting ~~shall, as~~
9 ~~a condition to employment, residence, or presence in a residential~~
10 ~~care facility, be fingerprinted and sign a declaration under penalty~~
11 ~~of perjury regarding any prior criminal convictions. shall obtain~~
12 ~~either a criminal record clearance or an exemption from~~
13 ~~disqualification, pursuant to subdivision (f), from the State~~
14 ~~Department of Social Services prior to employment, residence, or~~
15 ~~initial presence in the facility. A person specified in subdivision~~
16 ~~(b) who is not exempt from fingerprinting shall be fingerprinted~~
17 ~~and shall sign a declaration under penalty of perjury regarding~~
18 ~~any prior criminal convictions. The licensee shall submit~~
19 fingerprint images and related information to the Department of
20 Justice and the Federal Bureau of Investigation, through the
21 Department of Justice, for a state and federal level criminal
22 offender record information search, or to comply with paragraph
23 (1) of subdivision (g), prior to the person's employment, residence,
24 or initial presence in the residential care facility.

25 (B) These fingerprint images and related information shall be
26 electronically submitted to the Department of Justice in a manner
27 approved by the State Department of Social Services and the
28 Department of Justice, for the purpose of obtaining a permanent
29 set of fingerprints. A licensee's failure to submit fingerprint images
30 and related information to the Department of Justice, or to comply
31 with paragraph (1) of subdivision (g), as required in this section,
32 shall result in the citation of a deficiency and an immediate
33 assessment of civil penalties in the amount of one hundred dollars
34 (\$100) per violation per day for a maximum of five days, unless
35 the violation is a second or subsequent violation within a 12-month
36 period in which case the civil penalties shall be in the amount of
37 one hundred dollars (\$100) per violation for a maximum of 30
38 days, and shall be grounds for disciplining the licensee pursuant
39 to Section 1568.082. The State Department of Social Services may
40 assess civil penalties for continued violations as allowed in Section

1 1568.0822. The fingerprint images and related information shall
2 then be submitted to the Department of Justice for processing. The
3 licensee shall maintain and make available for inspection
4 documentation of the individual's clearance or exemption.

5 (2) A violation of the regulations adopted pursuant to Section
6 1522.04 shall result in the citation of a deficiency and an immediate
7 assessment of civil penalties in the amount of one hundred dollars
8 (\$100) per violation per day for a maximum of five days, unless
9 the violation is a second or subsequent violation within a 12-month
10 period in which case the civil penalties shall be in the amount of
11 one hundred dollars (\$100) per violation for a maximum of 30
12 days, and shall be grounds for disciplining the licensee pursuant
13 to Section 1568.082. The department may assess civil penalties
14 for continued violations as permitted by Section 1568.0822.

15 (3) Within 14 calendar days of the receipt of the fingerprint
16 images, the Department of Justice shall notify the State Department
17 of Social Services of the criminal record information, as provided
18 for in this subdivision. If no criminal record information has been
19 recorded, the Department of Justice shall provide the licensee and
20 the State Department of Social Services with a statement of that
21 fact within 14 calendar days of receipt of the fingerprint images.
22 If new fingerprint images are required for processing, the
23 Department of Justice shall, within 14 calendar days from the date
24 of receipt of the fingerprint images, notify the licensee that the
25 fingerprint images were illegible. The Department of Justice shall
26 notify the department, as required by Section 1522.04, and shall
27 notify the licensee by mail within 14 days of electronic
28 transmission of the fingerprint images to the Department of Justice,
29 if the person has no criminal history record.

30 (4) Except for persons specified in paragraph (2) of subdivision
31 (b), the licensee shall endeavor to ascertain the previous
32 employment history of persons required to be fingerprinted under
33 this subdivision. If it is determined by the State Department of
34 Social Services, on the basis of the fingerprint images submitted
35 to the Department of Justice, that the person has been convicted
36 of a sex offense against a minor, an offense specified in Section
37 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or a felony,
38 the department shall notify the licensee to act immediately to
39 terminate the person's employment, remove the person from the
40 residential care facility, or bar the person from entering the

1 residential care facility. The department may subsequently grant
2 an exemption pursuant to subdivision (f). If the conviction was for
3 another crime, except a minor traffic violation, the licensee shall,
4 upon notification by the department, act immediately to either (A)
5 terminate the person's employment, remove the person from the
6 residential care facility, or bar the person from entering the
7 residential care facility; or (B) seek an exemption pursuant to
8 subdivision (f). The department shall determine if the person shall
9 be allowed to remain in the facility until a decision on the
10 exemption is rendered. A licensee's failure to comply with the
11 department's prohibition of employment, contact with clients, or
12 presence in the facility as required by this paragraph shall result
13 in a citation of deficiency and an immediate assessment of civil
14 penalties by the department against the licensee, in the amount of
15 one hundred dollars (\$100) per violation per day for a maximum
16 of five days, unless the violation is a second or subsequent violation
17 within a 12-month period in which case the civil penalties shall
18 be in the amount of one hundred dollars (\$100) per violation for
19 a maximum of 30 days, and shall be grounds for disciplining the
20 licensee pursuant to Section 1568.082.

21 (5) The department may issue an exemption on its own motion
22 pursuant to subdivision (f) if the person's criminal history indicates
23 that the person is of good character based on the age, seriousness,
24 and frequency of the conviction or convictions. The department,
25 in consultation with interested parties, shall develop regulations
26 to establish the criteria to grant an exemption pursuant to this
27 paragraph.

28 (6) Concurrently with notifying the licensee pursuant to
29 paragraph (4), the department shall notify the affected individual
30 of his or her right to seek an exemption pursuant to subdivision
31 (f). The individual may seek an exemption only if the licensee
32 terminates the person's employment or removes the person from
33 the facility after receiving notice from the department pursuant to
34 paragraph (4).

35 (d) (1) For purposes of this section or any other provision of
36 this chapter, a conviction means a plea or verdict of guilty or a
37 conviction following a plea of nolo contendere. An action that the
38 department is permitted to take following the establishment of a
39 conviction may be taken when the time for appeal has elapsed,
40 when the judgment of conviction has been affirmed on appeal, or

1 when an order granting probation is made suspending the
2 imposition of the sentence, notwithstanding a subsequent order
3 pursuant to Sections 1203.4 and 1203.4a of the Penal Code
4 permitting that person to withdraw his or her plea of guilty and to
5 enter a plea of not guilty, setting aside the verdict of guilty, or
6 dismissing the accusation, information, or indictment. For purposes
7 of this chapter, the record of a conviction, or a copy thereof
8 certified by the clerk of the court or by a judge of the court in
9 which the conviction occurred, shall be conclusive evidence of the
10 conviction. For purposes of this section or any other provision of
11 this chapter, the arrest disposition report certified by the
12 Department of Justice, or documents admissible in a criminal action
13 pursuant to Section 969b of the Penal Code, shall be prima facie
14 evidence of the conviction, notwithstanding any other provision
15 of law prohibiting the admission of these documents in a civil or
16 administrative action.

17 (2) For purposes of this section or any other provision of this
18 chapter, the department shall consider criminal convictions from
19 another state or federal court as if the criminal offense was
20 committed in this state.

21 (e) (1) The State Department of Social Services shall not use
22 a record of arrest to deny, revoke, or terminate any application,
23 license, employment, or residence unless the department
24 investigates the incident and secures evidence, whether or not
25 related to the incident of arrest, that is admissible in an
26 administrative hearing to establish conduct by the person that may
27 pose a risk to the health and safety of any person who is or may
28 become a client.

29 (2) The department shall not issue a criminal record clearance
30 to a person who has been ~~arrested, and that arrest is pending~~
31 ~~investigation or conviction~~, *arrested* for any crime specified in
32 Section 290 of the Penal Code, for violating Section 245 or 273.5,
33 or subdivision (b) of Section 273a, of the Penal Code, or, prior to
34 January 1, 1994, paragraph (2) of Section 273a of the Penal Code,
35 *or for any crime for which the department is prohibited from*
36 *granting a criminal record exemption pursuant to subdivision (f),*
37 prior to the department's completion of an investigation pursuant
38 to paragraph (1).

39 (3) The State Department of Social Services is authorized to
40 obtain arrest or conviction records or reports from a law

1 enforcement agency as necessary to the performance of its duties
2 to inspect, license, and investigate community care facilities and
3 individuals associated with a community care facility.

4 (f) (1) After review of the record, the director may grant an
5 exemption from disqualification for a license as specified in
6 paragraphs (1) and (4) of subdivision (a), or for employment,
7 residence, or presence in a residential care facility as specified in
8 paragraphs (4), (5), and (6) of subdivision (c) if the director has
9 substantial and convincing evidence to support a reasonable belief
10 that the applicant and the person convicted of the crime, if other
11 than the applicant, are of such good character as to justify issuance
12 of the license or special permit or granting an exemption for
13 purposes of subdivision (c). However, an exemption shall not be
14 granted pursuant to this subdivision if the conviction was for any
15 of the following offenses:

16 (A) An offense specified in Section 220, 243.4, or 264.1,
17 subdivision (a) of Section 273a, or, prior to January 1, 1994,
18 paragraph (1) of Section 273a, Section 273d, 288, or 289,
19 subdivision (c) of Section 290, or Section 368, of the Penal Code,
20 or was a conviction of another crime against an individual specified
21 in subdivision (c) of Section 667.5 of the Penal Code.

22 (B) A felony offense specified in Section 729 of the Business
23 and Professions Code or Section 206 or 215, subdivision (a) of
24 Section 347, subdivision (b) of Section 417, or subdivision (a) of
25 Section 451 of the Penal Code.

26 (2) The department shall not prohibit a person from being
27 employed or having contact with clients in a facility on the basis
28 of a denied criminal record exemption request or arrest information
29 unless the department complies with Section 1568.092.

30 (g) (1) For purposes of compliance with this section, the
31 department may permit an individual to transfer a current criminal
32 record clearance, as defined in subdivision (a), from one facility
33 to another, as long as the criminal record clearance has been
34 processed through a state licensing district office, and is being
35 transferred to another facility licensed by a state licensing district
36 office. The request shall be in writing to the department, and shall
37 include a copy of the person's driver's license or valid
38 identification card issued by the Department of Motor Vehicles,
39 or a valid photo identification issued by another state or the United
40 States government if the person is not a California resident. Upon

1 request of the licensee, who shall enclose a self-addressed stamped
2 envelope for this purpose, the department shall verify whether the
3 individual has a clearance that can be transferred.

4 (2) The State Department of Social Services shall hold criminal
5 record clearances in its active files for a minimum of two years
6 after an employee is no longer employed at a licensed facility in
7 order for the criminal record clearance to be transferred.

8 (h) If a licensee or facility is required by law to deny
9 employment or to terminate employment of any employee based
10 on written notification from the state department that the employee
11 has a prior criminal conviction or is determined unsuitable for
12 employment under Section 1568.092, the licensee or facility shall
13 not incur civil liability or unemployment insurance liability as a
14 result of that denial or termination.

15 (i) (1) The Department of Justice shall charge a fee sufficient
16 to cover its cost in providing services to comply with the 14-day
17 requirement contained in subdivision (c) for provision to the
18 department of criminal record information.

19 (2) Paragraph (1) shall cease to be implemented when the
20 department adopts emergency regulations pursuant to Section
21 1522.04, and shall become inoperative when permanent regulations
22 are adopted under that section.

23 (j) Notwithstanding any other law, the department may provide
24 an individual with a copy of his or her state or federal level criminal
25 offender record information search response as provided to that
26 department by the Department of Justice if the department has
27 denied a criminal background clearance based on this information
28 and the individual makes a written request to the department for
29 a copy specifying an address to which it is to be sent. The state or
30 federal level criminal offender record information search response
31 shall not be modified or altered from its form or content as provided
32 by the Department of Justice and shall be provided to the address
33 specified by the individual in his or her written request. The
34 department shall retain a copy of the individual's written request
35 and the response and date provided.

36 SEC. 3. Section 1569.17 of the Health and Safety Code is
37 amended to read:

38 1569.17. The Legislature recognizes the need to generate timely
39 and accurate positive fingerprint identification of applicants as a
40 condition of issuing licenses, permits, or certificates of approval

for persons to operate or provide direct care services in a residential care facility for the elderly. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with clients of residential care facilities for the elderly may pose a risk to the clients' health and safety. An individual shall be required to obtain either a criminal record clearance or a criminal record exemption from the State Department of Social Services before his or her initial presence in a residential care facility for the elderly.

(a) (1) Before *and, as applicable, subsequent to* issuing a license to any person or persons to operate or manage a residential care facility for the elderly, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in subdivision (c) of Section 290 of the Penal Code, *or* for violating Section 245 or 273.5, subdivision (b) of Section 273a, or, prior to January 1, 1994, paragraph (2) of Section 273a, of the Penal Code, or for any crime for which the department ~~cannot grant an exemption if the person was convicted and the person has not been exonerated.~~ *is prohibited from granting a criminal record exemption pursuant to subdivision (f).*

(2) The criminal history information shall include the full criminal record, if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code.

(3) The following shall apply to the criminal record information:

(A) If the State Department of Social Services finds that the applicant or any other person specified in subdivision (b) has been convicted of a crime, other than a minor traffic violation, the application *or presence* shall be denied, unless the director grants an exemption pursuant to subdivision (f).

(B) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services may cease processing the ~~application~~ *criminal record information* until the conclusion of the trial.

1 (C) If no criminal record information has been recorded, the
2 Department of Justice shall provide the applicant and the State
3 Department of Social Services with a statement of that fact.

4 (D) If the State Department of Social Services finds after
5 licensure that the licensee, or any other person specified in
6 paragraph (2) of subdivision (b), has been convicted of a crime
7 other than a minor traffic violation, the license may be revoked,
8 unless the director grants an exemption pursuant to subdivision
9 (f).

10 (E) An applicant and any other person specified in subdivision
11 (b) shall submit fingerprint images and related information to the
12 Department of Justice and the Federal Bureau of Investigation,
13 through the Department of Justice, for a state and federal level
14 criminal offender record information search, in addition to the
15 search required by subdivision (a). If an applicant meets all other
16 conditions for licensure, except receipt of the Federal Bureau of
17 Investigation's criminal history information for the applicant and
18 persons listed in subdivision (b), the department may issue a license
19 if the applicant and each person described by subdivision (b) has
20 signed and submitted a statement that he or she has never been
21 convicted of a crime in the United States, other than a traffic
22 infraction as defined in paragraph (1) of subdivision (a) of Section
23 42001 of the Vehicle Code. If, after licensure, the department
24 determines that the licensee or person specified in subdivision (b)
25 has a criminal record, the license may be revoked pursuant to
26 Section 1569.50. The department may also suspend the license
27 pending an administrative hearing pursuant to Sections 1569.50
28 and 1569.51.

29 (b) In addition to the applicant, the provisions of this section
30 shall apply to criminal-~~convictions~~*of record clearances and*
31 *exemptions* for the following persons:

32 (1) (A) Adults responsible for administration or direct
33 supervision of staff.

34 (B) Any person, other than a client, residing in the facility.
35 Residents of unlicensed independent senior housing facilities that
36 are located in contiguous buildings on the same property as a
37 residential care facility for the elderly shall be exempt from these
38 requirements.

39 (C) Any person who provides client assistance in dressing,
40 grooming, bathing, or personal hygiene. Any nurse assistant or

1 home health aide meeting the requirements of Section 1338.5 or
2 1736.6, respectively, who is not employed, retained, or contracted
3 by the licensee, and who has been certified or recertified on or
4 after July 1, 1998, shall be deemed to meet the criminal record
5 clearance requirements of this section. A certified nurse assistant
6 and certified home health aide who will be providing client
7 assistance and who falls under this exemption shall provide one
8 copy of his or her current certification, prior to providing care, to
9 the residential care facility for the elderly. The facility shall
10 maintain the copy of the certification on file as long as the care is
11 being provided by the certified nurse assistant or certified home
12 health aide at the facility. Nothing in this paragraph restricts the
13 right of the department to exclude a certified nurse assistant or
14 certified home health aide from a licensed residential care facility
15 for the elderly pursuant to Section 1569.58.

16 (D) Any staff person, volunteer, or employee who has contact
17 with the clients.

18 (E) If the applicant is a firm, partnership, association, or
19 corporation, the chief executive officer or other person serving in
20 a similar capacity.

21 (F) Additional officers of the governing body of the applicant
22 or other persons with a financial interest in the applicant, as
23 determined necessary by the department by regulation. The criteria
24 used in the development of these regulations shall be based on the
25 person's capability to exercise substantial influence over the
26 operation of the facility.

27 (2) The following persons are exempt from requirements
28 applicable under paragraph (1):

29 (A) A spouse, relative, significant other, or close friend of a
30 client shall be exempt if this person is visiting the client or provides
31 direct care and supervision to that client only.

32 (B) A volunteer to whom all of the following apply:

33 (i) The volunteer is at the facility during normal waking hours.

34 (ii) The volunteer is directly supervised by the licensee or a
35 facility employee with a criminal record clearance or exemption.

36 (iii) The volunteer spends no more than 16 hours per week at
37 the facility.

38 (iv) The volunteer does not provide clients with assistance in
39 dressing, grooming, bathing, or personal hygiene.

40 (v) The volunteer is not left alone with clients in care.

1 (C) A third-party contractor retained by the facility if the
2 contractor is not left alone with clients in care.

3 (D) A third-party contractor or other business professional
4 retained by a client and at the facility at the request or by
5 permission of that client. These individuals shall not be left alone
6 with other clients.

7 (E) Licensed or certified medical professionals are exempt from
8 fingerprint and criminal background check requirements imposed
9 by community care licensing. This exemption does not apply to a
10 person who is a community care facility licensee or an employee
11 of the facility.

12 (F) Employees of licensed home health agencies and members
13 of licensed hospice interdisciplinary teams who have contact with
14 a resident of a residential care facility at the request of the resident
15 or resident's legal decisionmaker are exempt from fingerprint and
16 criminal background check requirements imposed by community
17 care licensing. This exemption does not apply to a person who is
18 a community care facility licensee or an employee of the facility.

19 (G) Clergy and other spiritual caregivers who are performing
20 services in common areas of the residential care facility, or who
21 are advising an individual resident at the request of, or with
22 permission of, the resident, are exempt from fingerprint and
23 criminal background check requirements imposed by community
24 care licensing. This exemption does not apply to a person who is
25 a community care facility licensee or an employee of the facility.

26 (H) Any person similar to those described in this subdivision,
27 as defined by the department in regulations.

28 (I) Nothing in this paragraph shall prevent a licensee from
29 requiring a criminal record clearance of any individual exempt
30 from the requirements of this section, provided that the individual
31 has client contact.

32 (c) (1) (A) Subsequent to initial licensure, ~~any a person~~
33 ~~required to be fingerprinted pursuant to specified in subdivision~~
34 ~~(b) shall, as a condition to employment, residence, or presence in~~
35 ~~a residential facility for the elderly, be fingerprinted and sign a~~
36 ~~declaration under penalty of perjury regarding any prior criminal~~
37 ~~convictions. who is not exempted from fingerprinting shall obtain~~
38 ~~either a criminal record clearance or an exemption, pursuant to~~
39 ~~subdivision (f), from the State Department of Social Services prior~~
40 ~~to employment, residence, or initial presence in a facility. A person~~

1 *specified in subdivision (b) who is not exempt from fingerprinting*
2 *shall be fingerprinted and shall sign a declaration under penalty*
3 *of perjury regarding any prior criminal convictions.* The licensee
4 shall submit these fingerprint images and related information to
5 the Department of Justice and the Federal Bureau of Investigation,
6 through the Department of Justice, for a state and federal level
7 criminal offender record information search, or to comply with
8 paragraph (1) of subdivision (g) prior to the person's employment,
9 residence, or initial presence in the residential care facility for the
10 elderly.

11 (B) These fingerprint images and related information shall be
12 electronically transmitted in a manner approved by the State
13 Department of Social Services and the Department of Justice. A
14 licensee's failure to submit fingerprint images and related
15 information to the Department of Justice, or to comply with
16 paragraph (1) of subdivision (g), as required in this section, shall
17 result in the citation of a deficiency and an immediate assessment
18 of civil penalties in the amount of one hundred dollars (\$100) per
19 violation per day for a maximum of five days, unless the violation
20 is a second or subsequent violation within a 12-month period in
21 which case the civil penalties shall be in the amount of one hundred
22 dollars (\$100) per violation for a maximum of 30 days, and shall
23 be grounds for disciplining the licensee pursuant to Section
24 1569.50. The State Department of Social Services may assess civil
25 penalties for continued violations as permitted by Section 1569.49.
26 The licensee shall then submit these fingerprint images to the State
27 Department of Social Services for processing. Documentation of
28 the individual's clearance or exemption shall be maintained by the
29 licensee and be available for inspection. The Department of Justice
30 shall notify the department, as required by Section 1522.04, and
31 notify the licensee by mail within 14 days of electronic
32 transmission of the fingerprints to the Department of Justice, if
33 the person has no criminal record. A violation of the regulations
34 adopted pursuant to Section 1522.04 shall result in the citation of
35 a deficiency and an immediate assessment of civil penalties in the
36 amount of one hundred dollars (\$100) per violation per day for a
37 maximum of five days, unless the violation is a second or
38 subsequent violation within a 12-month period in which case the
39 civil penalties shall be in the amount of one hundred dollars (\$100)
40 per violation for a maximum of 30 days, and shall be grounds for

1 disciplining the licensee pursuant to Section 1569.50. The
2 department may assess civil penalties for continued violations as
3 permitted by Section 1569.49.

4 (2) Within 14 calendar days of the receipt of the fingerprint
5 images, the Department of Justice shall notify the State Department
6 of Social Services of the criminal record information, as provided
7 for in this subdivision. If no criminal record information has been
8 recorded, the Department of Justice shall provide the licensee and
9 the State Department of Social Services with a statement of that
10 fact within 14 calendar days of receipt of the fingerprint images.
11 If new fingerprint images are required for processing, the
12 Department of Justice shall, within 14 calendar days from the date
13 of receipt of the fingerprint images, notify the licensee that the
14 fingerprint images were illegible.

15 (3) Except for persons specified in paragraph (2) of subdivision
16 (b), the licensee shall endeavor to ascertain the previous
17 employment history of persons required to be fingerprinted under
18 this subdivision. If the State Department of Social Services
19 determines, on the basis of the fingerprint images submitted to the
20 Department of Justice, that the person has been convicted of a sex
21 offense against a minor, an offense specified in Section 243.4,
22 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the State
23 Department of Social Services shall notify the licensee in writing
24 within 15 calendar days of the receipt of the notification from the
25 Department of Justice to act immediately to terminate the person's
26 employment, remove the person from the residential care facility
27 for the elderly, or bar the person from entering the residential care
28 facility for the elderly. The State Department of Social Services
29 may subsequently grant an exemption pursuant to subdivision (f).
30 If the conviction was for another crime, except a minor traffic
31 violation, the licensee shall, upon notification by the State
32 Department of Social Services, act immediately to either (1)
33 terminate the person's employment, remove the person from the
34 residential care facility for the elderly, or bar the person from
35 entering the residential care facility for the elderly or (2) seek an
36 exemption pursuant to subdivision (f). The department shall
37 determine if the person shall be allowed to remain in the facility
38 until a decision on the exemption is rendered by the department.
39 A licensee's failure to comply with the department's prohibition
40 of employment, contact with clients, or presence in the facility as

1 required by this paragraph shall result in a citation of deficiency
2 and an immediate assessment of civil penalties by the department
3 against the licensee, in the amount of one hundred dollars (\$100)
4 per violation per day for a maximum of five days, unless the
5 violation is a second or subsequent violation within a 12-month
6 period in which case the civil penalties shall be in the amount of
7 one hundred dollars (\$100) per violation for a maximum of 30
8 days, and shall be grounds for disciplining the licensee pursuant
9 to Section 1569.50.

10 (4) The department may issue an exemption on its own motion
11 pursuant to subdivision (f) if the person's criminal history indicates
12 that the person is of good character based on the age, seriousness,
13 and frequency of the conviction or convictions. The department,
14 in consultation with interested parties, shall develop regulations
15 to establish the criteria to grant an exemption pursuant to this
16 paragraph.

17 (5) Concurrently with notifying the licensee pursuant to
18 paragraph (4), the department shall notify the affected individual
19 of his or her right to seek an exemption pursuant to subdivision
20 (f). The individual may seek an exemption only if the licensee
21 terminates the person's employment or removes the person from
22 the facility after receiving notice from the department pursuant to
23 paragraph (4).

24 (d) (1) For purposes of this section or any other provision of
25 this chapter, a conviction means a plea or verdict of guilty or a
26 conviction following a plea of nolo contendere. Any action that
27 the department is permitted to take following the establishment of
28 a conviction may be taken when the time for appeal has elapsed,
29 when the judgment of conviction has been affirmed on appeal or
30 when an order granting probation is made suspending the
31 imposition of the sentence, notwithstanding a subsequent order
32 pursuant to the provisions of Sections 1203.4 and 1203.4a of the
33 Penal Code permitting a person to withdraw his or her plea of
34 guilty and to enter a plea of not guilty, or setting aside the verdict
35 of guilty, or dismissing the accusation, information, or indictment.
36 For purposes of this section or any other provision of this chapter,
37 the record of a conviction, or a copy thereof certified by the clerk
38 of the court or by a judge of the court in which the conviction
39 occurred, shall be conclusive evidence of the conviction. For
40 purposes of this section or any other provision of this chapter, the

1 arrest disposition report certified by the Department of Justice or
2 documents admissible in a criminal action pursuant to Section
3 969b of the Penal Code shall be prima facie evidence of the
4 conviction, notwithstanding any other law prohibiting the
5 admission of these documents in a civil or administrative action.

6 (2) For purposes of this section or any other provision of this
7 chapter, the department shall consider criminal convictions from
8 another state or federal court as if the criminal offense was
9 committed in this state.

10 (e) (1) The State Department of Social Services shall not use
11 a record of arrest to deny, revoke, or terminate any application,
12 license, employment, or residence unless the department
13 investigates the incident and secures evidence, whether or not
14 related to the incident of arrest, that is admissible in an
15 administrative hearing to establish conduct by the person that may
16 pose a risk to the health and safety of any person who is or may
17 become a client.

18 (2) The department shall not issue a criminal record clearance
19 to a person who has been ~~arrested, and that arrest is pending~~
20 ~~investigation or conviction~~, *arrested* for any crime specified in
21 Section 290 of the Penal Code, *or* for violating Section 245 or
22 273.5, subdivision (b) of Section 273a, of the Penal Code, or, prior
23 to January 1, 1994, paragraph (2) of Section 273a, of the Penal
24 Code, *or for any crime for which the department is prohibited from*
25 *granting a record exemption pursuant to subdivision (f)*, prior to
26 the department's completion of an investigation pursuant to
27 paragraph (1).

28 (3) The State Department of Social Services is authorized to
29 obtain any arrest or conviction records or reports from any law
30 enforcement agency as necessary to the performance of its duties
31 to inspect, license, and investigate community care facilities and
32 individuals associated with a community care facility.

33 (f) (1) After review of the record, the director may grant an
34 exemption from disqualification for a license as specified in
35 paragraphs (1) and (4) of subdivision (a), or for employment,
36 residence, or presence in a residential care facility for the elderly
37 as specified in paragraphs (4), (5), and (6) of subdivision (c) if the
38 director has substantial and convincing evidence to support a
39 reasonable belief that the applicant and the person convicted of
40 the crime, if other than the applicant, are of such good character

1 as to justify issuance of the license or special permit or granting
2 an exemption for purposes of subdivision (c). However, an
3 exemption shall not be granted pursuant to this subdivision if the
4 conviction was for any of the following offenses:

5 (A) An offense specified in Section 220, 243.4, or 264.1,
6 subdivision (a) of Section 273a, or, prior to January 1, 1994,
7 paragraph (1) of Section 273a, Section 273d, 288, or 289,
8 subdivision (c) of Section 290, or Section 368, of the Penal Code,
9 or was a conviction of another crime against an individual specified
10 in subdivision (c) of Section 667.5 of the Penal Code.

11 (B) A felony offense specified in Section 729 of the Business
12 and Professions Code or Section 206 or 215, subdivision (a) of
13 Section 347, subdivision (b) of Section 417, or subdivision (a) of
14 Section 451 of the Penal Code.

15 (2) The director shall notify in writing the licensee or the
16 applicant of his or her decision within 60 days of receipt of all
17 information from the applicant and other sources determined
18 necessary by the director for the rendering of a decision pursuant
19 to this subdivision.

20 (3) The department shall not prohibit a person from being
21 employed or having contact with clients in a facility on the basis
22 of a denied criminal record exemption request or arrest information
23 unless the department complies with the requirements of Section
24 1569.58.

25 (g) (1) For purposes of compliance with this section, the
26 department may permit an individual to transfer a current criminal
27 record clearance, as defined in subdivision (a), from one facility
28 to another, as long as the criminal record clearance has been
29 processed through a state licensing district office, and is being
30 transferred to another facility licensed by a state licensing district
31 office. The request shall be submitted in writing to the department,
32 and shall include a copy of the person's driver's license or valid
33 identification card issued by the Department of Motor Vehicles,
34 or a valid photo identification issued by another state or the United
35 States government if the person is not a California resident. Upon
36 request of the licensee, who shall enclose a self-addressed stamped
37 envelope for this purpose, the department shall verify whether the
38 individual has a clearance that can be transferred.

39 (2) The State Department of Social Services shall hold criminal
40 record clearances in its active files for a minimum of two years

1 after an employee is no longer employed at a licensed facility in
2 order for the criminal record clearances to be transferred under
3 this section.

4 (h) If a licensee or facility is required by law to deny
5 employment or to terminate employment of any employee based
6 on written notification from the department that the employee has
7 a prior criminal conviction or is determined unsuitable for
8 employment under Section 1569.58, the licensee or facility shall
9 not incur civil liability or unemployment insurance liability as a
10 result of that denial or termination.

11 (i) Notwithstanding any other law, the department may provide
12 an individual with a copy of his or her state or federal level criminal
13 offender record information search response as provided to that
14 department by the Department of Justice if the department has
15 denied a criminal background clearance based on this information
16 and the individual makes a written request to the department for
17 a copy specifying an address to which it is to be sent. The state or
18 federal level criminal offender record information search response
19 shall not be modified or altered from its form or content as provided
20 by the Department of Justice and shall be provided to the address
21 specified by the individual in his or her written request. The
22 department shall retain a copy of the individual's written request
23 and the response and date provided.

24 SEC. 4. Section 1596.871 of the Health and Safety Code is
25 amended to read:

26 1596.871. The Legislature recognizes the need to generate
27 timely and accurate positive fingerprint identification of applicants
28 as a condition of issuing licenses, permits, or certificates of
29 approval for persons to operate or provide direct care services in
30 a child care center or family child care home. It is the intent of the
31 Legislature in enacting this section to require the fingerprints of
32 those individuals whose contact with child day care facility clients
33 may pose a risk to the children's health and safety. An individual
34 shall be required to obtain either a criminal record clearance or a
35 criminal record exemption from the State Department of Social
36 Services before his or her initial presence in a child day care
37 facility.

38 (a) (1) Before *and, as applicable, subsequent to* issuing a license
39 or special permit to any person to operate or manage a day care
40 facility, the department shall secure from an appropriate law

1 enforcement agency a criminal record to determine whether the
2 applicant or any other person specified in subdivision (b) has ever
3 been convicted of a crime other than a minor traffic violation or
4 arrested for any crime specified in subdivision (c) of Section 290
5 of the Penal Code, *or* for violating Section 245 or 273.5,
6 subdivision (b) of Section 273a, or, prior to January 1, 1994,
7 paragraph (2) of Section 273a, of the Penal Code, or for any crime
8 for which the department cannot grant an exemption if the person
9 ~~was convicted and the person has not been exonerated.~~ *is prohibited*
10 *from granting a criminal record exemption pursuant to subdivision*
11 *(f).*

12 (2) The criminal history information shall include the full
13 criminal record, if any, of those persons, and subsequent arrest
14 information pursuant to Section 11105.2 of the Penal Code.

15 (3) Except during the 2003–04 to the 2014–15 fiscal years,
16 inclusive, neither the Department of Justice nor the department
17 may charge a fee for the fingerprinting of an applicant who will
18 serve six or fewer children or any family day care applicant for a
19 license, or for obtaining a criminal record of an applicant pursuant
20 to this section.

21 (4) The following shall apply to the criminal record information:

22 (A) If the State Department of Social Services finds that the
23 applicant or any other person specified in subdivision (b) has been
24 convicted of a crime, other than a minor traffic violation, the
25 application shall be denied, unless the director grants an exemption
26 pursuant to subdivision (f).

27 (B) If the State Department of Social Services finds that the
28 applicant, or any other person specified in subdivision (b), is
29 awaiting trial for a crime other than a minor traffic violation, the
30 State Department of Social Services may cease processing the
31 ~~application~~ *criminal record information* until the conclusion of
32 the trial.

33 (C) If no criminal record information has been recorded, the
34 Department of Justice shall provide the applicant and the State
35 Department of Social Services with a statement of that fact.

36 (D) If the State Department of Social Services finds after
37 licensure that the licensee, or any other person specified in
38 paragraph (2) of subdivision (b), has been convicted of a crime
39 other than a minor traffic violation, the license may be revoked,

1 unless the director grants an exemption pursuant to subdivision
2 (f).

3 (E) An applicant and any other person specified in subdivision
4 (b) shall submit fingerprint images and related information to the
5 Department of Justice and the Federal Bureau of Investigation,
6 through the Department of Justice, for a state and federal level
7 criminal offender record information search, in addition to the
8 search required by subdivision (a). If an applicant meets all other
9 conditions for licensure, except receipt of the Federal Bureau of
10 Investigation's criminal history information for the applicant and
11 persons listed in subdivision (b), the department may issue a license
12 if the applicant and each person described by subdivision (b) has
13 signed and submitted a statement that he or she has never been
14 convicted of a crime in the United States, other than a traffic
15 infraction as defined in paragraph (1) of subdivision (a) of Section
16 42001 of the Vehicle Code. If, after licensure, the department
17 determines that the licensee or person specified in subdivision (b)
18 has a criminal record, the license may be revoked pursuant to
19 Section 1596.885. The department may also suspend the license
20 pending an administrative hearing pursuant to Section 1596.886.

21 (b) (1) In addition to the applicant, this section shall be
22 applicable to criminal ~~convictions~~ of *record clearances and*
23 *exemptions* for the following persons:

24 (A) Adults responsible for administration or direct supervision
25 of staff.

26 (B) Any person, other than a child, residing in the facility.

27 (C) Any person who provides care and supervision to the
28 children.

29 (D) Any staff person, volunteer, or employee who has contact
30 with the children.

31 (i) A volunteer providing time-limited specialized services shall
32 be exempt from the requirements of this subdivision if this person
33 is directly supervised by the licensee or a facility employee with
34 a criminal record clearance or exemption, the volunteer spends no
35 more than 16 hours per week at the facility, and the volunteer is
36 not left alone with children in care.

37 (ii) A student enrolled or participating at an accredited
38 educational institution shall be exempt from the requirements of
39 this subdivision if the student is directly supervised by the licensee
40 or a facility employee with a criminal record clearance or

1 exemption, the facility has an agreement with the educational
2 institution concerning the placement of the student, the student
3 spends no more than 16 hours per week at the facility, and the
4 student is not left alone with children in care.

5 (iii) A volunteer who is a relative, legal guardian, or foster parent
6 of a client in the facility shall be exempt from the requirements of
7 this subdivision.

8 (iv) A contracted repair person retained by the facility, if not
9 left alone with children in care, shall be exempt from the
10 requirements of this subdivision.

11 (v) Any person similar to those described in this subdivision,
12 as defined by the department in regulations.

13 (E) If the applicant is a firm, partnership, association, or
14 corporation, the chief executive officer, other person serving in
15 like capacity, or a person designated by the chief executive officer
16 as responsible for the operation of the facility, as designated by
17 the applicant agency.

18 (F) If the applicant is a local educational agency, the president
19 of the governing board, the school district superintendent, or a
20 person designated to administer the operation of the facility, as
21 designated by the local educational agency.

22 (G) Additional officers of the governing body of the applicant,
23 or other persons with a financial interest in the applicant, as
24 determined necessary by the department by regulation. The criteria
25 used in the development of these regulations shall be based on the
26 person's capability to exercise substantial influence over the
27 operation of the facility.

28 (H) This section does not apply to employees of child care and
29 development programs under contract with the State Department
30 of Education who have completed a criminal record clearance as
31 part of an application to the Commission on Teacher Credentialing,
32 and who possess a current credential or permit issued by the
33 commission, including employees of child care and development
34 programs that serve both children subsidized under, and children
35 not subsidized under, a State Department of Education contract.
36 The Commission on Teacher Credentialing shall notify the
37 department upon revocation of a current credential or permit issued
38 to an employee of a child care and development program under
39 contract with the State Department of Education.

(I) This section does not apply to employees of a child care and development program operated by a school district, county office of education, or community college district under contract with the State Department of Education who have completed a criminal record clearance as a condition of employment. The school district, county office of education, or community college district upon receiving information that the status of an employee's criminal record clearance has changed shall submit that information to the department.

(2) Nothing in this subdivision shall prevent a licensee from requiring a criminal record clearance of any individuals exempt from the requirements under this subdivision.

(c) (1) (A) Subsequent to initial licensure, ~~any a person specified in subdivision (b) and not exempted who is not exempt from fingerprinting shall, as a condition to employment, residence, or presence in a child day care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal conviction.~~ *shall obtain either a criminal record clearance or an exemption from disqualification, pursuant to subdivision (f), from the State Department of Social Services prior to employment, residence, or initial presence in the facility. A person specified in subdivision (b) who is not exempt from fingerprinting shall be fingerprinted and shall sign a declaration under penalty of perjury regarding any prior criminal convictions.* The licensee shall submit fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, or to comply with paragraph (1) of subdivision (h), prior to the person's employment, residence, or initial presence in the child day care facility.

(B) These fingerprint images for the purpose of obtaining a permanent set of fingerprints shall be electronically submitted to the Department of Justice in a manner approved by the State Department of Social Services and to the Department of Justice, or to comply with paragraph (1) of subdivision (h), as required in this section, shall result in the citation of a deficiency, and an immediate assessment of civil penalties in the amount of one hundred dollars (\$100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars (\$100) per violation for

1 a maximum of 30 days, and shall be grounds for disciplining the
2 licensee pursuant to Section 1596.885 or 1596.886. The State
3 Department of Social Services may assess civil penalties for
4 continued violations permitted by Sections 1596.99 and 1597.62.
5 The fingerprint images and related information shall then be
6 submitted to the department for processing. Within 14 calendar
7 days of the receipt of the fingerprint images, the Department of
8 Justice shall notify the State Department of Social Services of the
9 criminal record information, as provided in this subdivision. If no
10 criminal record information has been recorded, the Department of
11 Justice shall provide the licensee and the State Department of
12 Social Services with a statement of that fact within 14 calendar
13 days of receipt of the fingerprint images. If new fingerprint images
14 are required for processing, the Department of Justice shall, within
15 14 calendar days from the date of receipt of the fingerprint images,
16 notify the licensee that the fingerprints were illegible.

17 (C) Documentation of the individual's clearance or exemption
18 shall be maintained by the licensee, and shall be available for
19 inspection. When live-scan technology is operational, as defined
20 in Section 1522.04, the Department of Justice shall notify the
21 department, as required by that section, and notify the licensee by
22 mail within 14 days of electronic transmission of the fingerprints
23 to the Department of Justice, if the person has no criminal record.
24 Any violation of the regulations adopted pursuant to Section
25 1522.04 shall result in the citation of a deficiency and an immediate
26 assessment of civil penalties in the amount of one hundred dollars
27 (\$100) per violation per day for a maximum of five days, unless
28 the violation is a second or subsequent violation within a 12-month
29 period in which case the civil penalties shall be in the amount of
30 one hundred dollars (\$100) per violation for a maximum of 30
31 days, and shall be grounds for disciplining the licensee pursuant
32 to Section 1596.885 or 1596.886. The department may assess civil
33 penalties for continued violations, as permitted by Sections 1596.99
34 and 1597.62.

35 (2) Except for persons specified in paragraph (2) of subdivision
36 (b), the licensee shall endeavor to ascertain the previous
37 employment history of persons required to be fingerprinted under
38 this subdivision. If it is determined by the department, on the basis
39 of fingerprints submitted to the Department of Justice, that the
40 person has been convicted of a sex offense against a minor, an

1 offense specified in Section 243.4, 273a, 273d, 273g, or 368 of
2 the Penal Code, or a felony, the State Department of Social
3 Services shall notify the licensee to act immediately to terminate
4 the person's employment, remove the person from the child day
5 care facility, or bar the person from entering the child day care
6 facility. The department may subsequently grant an exemption
7 pursuant to subdivision (f). If the conviction was for another crime
8 except a minor traffic violation, the licensee shall, upon notification
9 by the State Department of Social Services, act immediately to
10 either (1) terminate the person's employment, remove the person
11 from the child day care facility, or bar the person from entering
12 the child day care facility; or (2) seek an exemption pursuant to
13 subdivision (f). The department shall determine if the person shall
14 be allowed to remain in the facility until a decision on the
15 exemption is rendered. A licensee's failure to comply with the
16 department's prohibition of employment, contact with clients, or
17 presence in the facility as required by this paragraph shall result
18 in a citation of deficiency and an immediate assessment of civil
19 penalties by the department against the licensee, in the amount of
20 one hundred dollars (\$100) per violation per day for a maximum
21 of five days, unless the violation is a second or subsequent violation
22 within a 12-month period in which case the civil penalties shall
23 be in the amount of one hundred dollars (\$100) per violation for
24 a maximum of 30 days, and shall be grounds for disciplining the
25 licensee pursuant to Section 1596.885 or 1596.886.

26 (3) The department may issue an exemption on its own motion
27 pursuant to subdivision (f) if the person's criminal history indicates
28 that the person is of good character based on the age, seriousness,
29 and frequency of the conviction or convictions. The department,
30 in consultation with interested parties, shall develop regulations
31 to establish the criteria to grant an exemption pursuant to this
32 paragraph.

33 (4) Concurrently with notifying the licensee pursuant to
34 paragraph (3), the department shall notify the affected individual
35 of his or her right to seek an exemption pursuant to subdivision
36 (f). The individual may seek an exemption only if the licensee
37 terminates the person's employment or removes the person from
38 the facility after receiving notice from the department pursuant to
39 paragraph (3).

1 (d) (1) For purposes of this section or any other provision of
2 this chapter, a conviction means a plea or verdict of guilty or a
3 conviction following a plea of nolo contendere. Any action that
4 the department is permitted to take following the establishment of
5 a conviction may be taken when the time for appeal has elapsed,
6 when the judgment of conviction has been affirmed on appeal, or
7 when an order granting probation is made suspending the
8 imposition of sentence, notwithstanding a subsequent order
9 pursuant to Sections 1203.4 and 1203.4a of the Penal Code
10 permitting the person to withdraw his or her plea of guilty and to
11 enter a plea of not guilty, or setting aside the verdict of guilty, or
12 dismissing the accusation, information, or indictment. For purposes
13 of this section or any other provision of this chapter, the record of
14 a conviction, or a copy thereof certified by the clerk of the court
15 or by a judge of the court in which the conviction occurred, shall
16 be conclusive evidence of the conviction. For purposes of this
17 section or any other provision of this chapter, the arrest disposition
18 report certified by the Department of Justice, or documents
19 admissible in a criminal action pursuant to Section 969b of the
20 Penal Code, shall be prima facie evidence of conviction,
21 notwithstanding any other law prohibiting the admission of these
22 documents in a civil or administrative action.

23 (2) For purposes of this section or any other provision of this
24 chapter, the department shall consider criminal convictions from
25 another state or federal court as if the criminal offense was
26 committed in this state.

27 (e) (1) The State Department of Social Services shall not use
28 a record of arrest to deny, revoke, or terminate any application,
29 license, employment, or residence unless the department
30 investigates the incident and secures evidence, whether or not
31 related to the incident of arrest, that is admissible in an
32 administrative hearing to establish conduct by the person that may
33 pose a risk to the health and safety of any person who is or may
34 become a client.

35 (2) The department shall not issue a criminal record clearance
36 to a person who has been ~~arrested, and that arrest is pending~~
37 ~~investigation or conviction, arrested~~ for any crime specified in
38 Section 290 of the Penal Code, *or* for violating Section 245 or
39 273.5, subdivision (b) of Section 273a, of the Penal Code, or, prior
40 to January 1, 1994, paragraph (2) of Section 273a, of the Penal

1 Code, or for any crime for which the department is prohibited from
2 granting a criminal record exemption pursuant to subdivision (f),
3 prior to the department's completion of an investigation pursuant
4 to paragraph (1).

5 (3) The State Department of Social Services is authorized to
6 obtain any arrest or conviction records or reports from any law
7 enforcement agency as necessary to the performance of its duties
8 to inspect, license, and investigate community care facilities and
9 individuals associated with a community care facility.

10 (f) (1) After review of the record, the director may grant an
11 exemption from disqualification for a license or special permit as
12 specified in paragraphs (1) and (4) of subdivision (a), or for
13 employment, residence, or presence in a child day care facility as
14 specified in paragraphs (3), (4), and (5) of subdivision (c) if the
15 director has substantial and convincing evidence to support a
16 reasonable belief that the applicant and the person convicted of
17 the crime, if other than the applicant, are of good character so as
18 to justify issuance of the license or special permit or granting an
19 exemption for purposes of subdivision (c). However, an exemption
20 shall not be granted pursuant to this subdivision if the conviction
21 was for any of the following offenses:

22 (A) An offense specified in Section 220, 243.4, or 264.1,
23 subdivision (a) of Section 273a, or, prior to January 1, 1994,
24 paragraph (1) of Section 273a, Section 273d, 288, or 289,
25 subdivision (c) of Section 290, or Section 368, of the Penal Code,
26 or was a conviction of another crime against an individual specified
27 in subdivision (c) of Section 667.5 of the Penal Code.

28 (B) A felony offense specified in Section 729 of the Business
29 and Professions Code or Section 206 or 215, subdivision (a) of
30 Section 347, subdivision (b) of Section 417, or subdivision (a) or
31 (b) of Section 451 of the Penal Code.

32 (2) The department shall not prohibit a person from being
33 employed or having contact with clients in a facility on the basis
34 of a denied criminal record exemption request or arrest information
35 unless the department complies with the requirements of Section
36 1596.8897.

37 (g) Upon request of the licensee, who shall enclose a
38 self-addressed stamped postcard for this purpose, the Department
39 of Justice shall verify receipt of the fingerprint images.

1 (h) (1) For the purposes of compliance with this section, the
2 department may permit an individual to transfer a current criminal
3 record clearance, as defined in subdivision (a), from one facility
4 to another, as long as the criminal record clearance has been
5 processed through a state licensing district office, and is being
6 transferred to another facility licensed by a state licensing district
7 office. The request shall be in writing to the department, and shall
8 include a copy of the person's driver's license or valid
9 identification card issued by the Department of Motor Vehicles,
10 or a valid photo identification issued by another state or the United
11 States government if the person is not a California resident. Upon
12 request of the licensee, who shall enclose a self-addressed stamped
13 envelope for this purpose, the department shall verify whether the
14 individual has a clearance that can be transferred.

15 (2) The State Department of Social Services shall hold criminal
16 record clearances in its active files for a minimum of two years
17 after an employee is no longer employed at a licensed facility in
18 order for the criminal record clearances to be transferred.

19 (3) The following shall apply to a criminal record clearance or
20 exemption from the department or a county office with
21 department-delegated licensing authority:

22 (A) A county office with department-delegated licensing
23 authority may accept a clearance or exemption from the
24 department.

25 (B) The department may accept a clearance or exemption from
26 any county office with department-delegated licensing authority.

27 (C) A county office with department-delegated licensing
28 authority may accept a clearance or exemption from any other
29 county office with department-delegated licensing authority.

30 (4) With respect to notifications issued by the Department of
31 Justice pursuant to Section 11105.2 of the Penal Code concerning
32 an individual whose criminal record clearance was originally
33 processed by the department or a county office with
34 department-delegated licensing authority, all of the following shall
35 apply:

36 (A) The Department of Justice shall process a request from the
37 department or a county office with department-delegated licensing
38 authority to receive the notice, only if all of the following
39 conditions are met:

1 (i) The request shall be submitted to the Department of Justice
2 by the agency to be substituted to receive the notification.

3 (ii) The request shall be for the same applicant type as the type
4 for which the original clearance was obtained.

5 (iii) The request shall contain all prescribed data elements and
6 format protocols pursuant to a written agreement between the
7 department and the Department of Justice.

8 (B) (i) On or before January 7, 2005, the department shall notify
9 the Department of Justice of all county offices that have
10 department-delegated licensing authority.

11 (ii) The department shall notify the Department of Justice within
12 15 calendar days of the date on which a new county office receives
13 department-delegated licensing authority or a county's delegated
14 licensing authority is rescinded.

15 (C) The Department of Justice shall charge the department or
16 a county office with department-delegated licensing authority a
17 fee for each time a request to substitute the recipient agency is
18 received for purposes of this paragraph. This fee shall not exceed
19 the cost of providing the service.

20 (i) Notwithstanding any other law, the department may provide
21 an individual with a copy of his or her state or federal level criminal
22 offender record information search response as provided to that
23 department by the Department of Justice if the department has
24 denied a criminal background clearance based on this information
25 and the individual makes a written request to the department for
26 a copy specifying an address to which it is to be sent. The state or
27 federal level criminal offender record information search response
28 shall not be modified or altered from its form or content as provided
29 by the Department of Justice and shall be provided to the address
30 specified by the individual in his or her written request. The
31 department shall retain a copy of the individual's written request
32 and the response and date provided.